

Docket Management Facility
U.S. Department of Transportation
West Building Ground Floor
Room W12-140
1200 New Jersey Ave, SE
Washington, DC 20590

March 1, 2008

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Comments on Proposed Rule, FMCSA- 2007-27748.

Dear FMCSA Administrator:

On page 73231 (A) Scope and Applicability, of the proposed rule concerning exempted drivers, it states under Number (8) certain drivers in farm-related service industries are exempt.

I would ask the FMCSA to be more specific in the definition of farm related service industries.

I own and operate a custom harvesting business; a person engaged in custom harvesting has an exemption under 391.2 general exemptions from some driver qualification rules. I would ask the FMCSA to use wording similar to our 391.2 exemption when identifying certain farm related service industry drivers.

I would request the FMCSA use the following wording:

(a) Farm custom operation, the rules in this part do not apply to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom harvesting operations, if the commercial motor vehicle is used to--

(1) Transport farm machinery, supplies, or both, to or from a farm for custom harvesting operations on a farm; and transport farm machinery from one farm to another farm across State lines; or

(2) Transport custom-harvested crops to storage or market.

There are several reasons custom harvesters need this specific exemption:

(1) Custom harvesters hire and train seasonal CDL drivers. Most drivers that are hired do not have a CDL so the custom harvester helps the driver obtain a CDL and all expenses and training to obtain the CDL are paid for by the custom harvester. If this proposed rule does not include a specific exemption for custom harvesters, the custom harvesters would have to hire their seasonal drivers two months before they need them to comply with the FMCSA proposed rules, and the cost could be \$8,000 per driver.

(2) The cost of the proposed Driver Training Certification would have to be paid by the custom harvester. Because most of the entry level drivers (U.S. employees) do not have enough funds to obtain a Driver Training Certificate, most of the U.S. employees that a custom harvester hires need an advance on their wages just to get to the job site. After the U.S. custom harvesters pay for the training of the entry level U.S. driver and pay all expenses to obtain their CDL, approximately 50% of the entry level U.S. drivers will quit the custom harvester and go to work for a trucking company, which is not seasonal.

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(3) Some of the drivers are H2-A temporary workers from a foreign country and the custom harvester helps them obtain a Non-resident CDL. This CDL is good only for the length of their work visa, which is normally six to eleven months.

(4) When a custom harvester hires an H2-A temporary worker, the custom harvester has to pay the H2-A worker's plane fare to the U.S. and back. They also have to sign a contract that guarantees their wages. If the custom harvesters have to hire their H2-A workers two months before the need of the worker, and are forced to comply with the FMCSA proposed rule, it could cost the custom harvester \$10,000 for each H2-A worker.

(5) Most, if not all, H2-A workers that are hired by custom harvesters already have a CDL issued from a foreign jurisdiction. Because the U.S. Secretary of Transportation has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction do not meet the testing standards established in 49 C.F.R. part 383, the H2-A temporary worker has to obtain a Non-resident CDL. Even H2-A workers from Mexico have to obtain a U.S. CDL because the insurance industry in the U.S. will not insure a Mexican driver that has a Mexican CDL. If the CDL driver is from Mexico and is working for a U.S. Custom harvester, the U.S. insurance companies do not trust the Mexican CDL Licensing Agency.

(6) Safety - The U.S. Custom Harvesters have a very good safety record. Because the custom harvester's trucks are used less than 20,000 miles per truck per year on public roads, the accident rate is far less per truck because of limited exposure. All the loads hauled by the entry level drivers are hauled less than 30 miles, except when moving equipment across state lines, from farm to farm. They are **always** under direct supervision of the custom harvester at **all** times.

Summary of Comments. Docket 2007-27748:

The U.S. custom harvesters harvest 50% of the wheat, 25% of the feed corn, 50% of the corn silage, and 25% of the cotton in the United States. If the FMCSA proposed rule does not have a specific exemption for custom harvesters, most of the custom harvesters will not be able to financially obtain a CDL for their truck drivers and will be forced out of business.

U.S. Custom Harvester

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